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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,526	12/19/2003	Patrick C. Urschel	A3-1700	1525
27127	7590	06/06/2005	EXAMINER	
HARTMAN & HARTMAN, P.C. 552 EAST 700 NORTH VALPARAISO, IN 46383			CHOI, STEPHEN	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/707,526	Applicant(s) URSCHEL ET AL.	
	Examiner Stephen Choi	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 10-13, 15-17 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6-9, 14, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. In view of applicant's amendment filed on 18 April 2005, the restriction requirement between groups I-II made in the Office action mailed on 20 October 2004 is moot. Claims 2-5, 10-13, 15-17, and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Leo (US 2,006,643).

Leo discloses all the recited steps of the invention including:

- a) providing a cutting means comprising at least one cutting element disposed in a cutting plane that is not vertical (50);
- b) individually delivering food products to the cutting means by causing the food products to free-fall through a feed passage (at 20) and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane (page 2, left col., lines 55-57 and right col., lines 13-23);

c) contacting the food products and positioning the food products so that they free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free- fall through the feed passage and prior to encountering the cutting means so as to produce size-reduced products of substantially consistent size and shape (page 1 left col., lines 34-37).

Regarding claims 6-7, only the outer peripheries of the food products contact the inner wall of the element 20 as they free-fall through the feed passage that are oriented substantially vertical.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-9, 14, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leo in view of Shadduck (US 2,572,770).

Leo discloses the invention substantially as claimed except for a plurality of uniformly distributed resilient members extending radially inward into the feed passage toward a central axis. Shadduck discloses a plurality of uniformly distributed resilient members (36) extending radially inward into the feed passage for centering the food products. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ resilient members as taught by Shadduck on the

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device of Leo in order to center the food products within a casing having a cross section size larger than a cross section size of the food products so as to produce substantially uniform sized pieces.

Response to Arguments

6. Applicant's arguments filed 18 April 2005 have been fully considered but they are not persuasive and arguments with respect to claims 8-9, 14, and 18-19 have been considered but are moot in view of the new ground(s) of rejection.

Applicants contend that Leo does not disclose the limitation "causing the food products to ...free-fall through the cutting means entirely under the force of gravity".

As set forth above, Leo does disclose such a limitation. A food product falls by gravity through the cutting means (50). See (page 2, left col., lines 55-57 and right col., lines 13-23).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Choi whose telephone number is 571-272-4504. The examiner can normally be reached on Monday-Friday 9:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SC
1 June 2005


STEPHEN CHOI
PRIMARY EXAMINER